

SECOND REGULAR SESSION

# HOUSE BILL NO. 1597

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FLANIGAN.

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D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 192, RSMo, by adding thereto thirteen new sections relating to home care agencies, with a penalty provision.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 192, RSMo, is amended by adding thereto thirteen new sections, to  
2 be known as sections 192.1010, 192.1012, 192.1014, 192.1016, 192.1018, 192.1020, 192.1022,  
3 192.1024, 192.1026, 192.1028, 192.1030, 192.1032, and 192.1034, to read as follows:

**192.1010. 1. Sections 192.1010 to 192.1034 shall be known as the “Home Care  
2 Agency Licensure Act”.**

**3 2. As used in sections 192.1010 to 192.1034, the following terms shall mean:**

**4 (1) “Department”, the department of health and senior services;**

**5 (2) “Geographic service area”, the geographic area in which a licensed agency  
6 provides home care services;**

**7 (3) “Home care agency”, a private or public organization that provides home care  
8 services;**

**9 (4) “Home care agency director”, the person having administrative responsibility  
10 for the operation of the licensed agency site;**

**11 (5) “Home care client”, an individual who receives home care services;**

**12 (6) “Home care services”, any of the following services and directly related medical  
13 supplies and appliances, which are provided to an individual in a place of temporary or  
14 permanent residence used as an individual’s home:**

**15 (a) Nursing care provided by or under the supervision of a registered nurse;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16           (b) Physical, occupational, or speech therapy, when provided to an individual who  
17 also is receiving nursing services, or any other of these therapy services, in a place of  
18 temporary or permanent residence used as the individual's home;

19           (c) Medical social services;

20           (d) In-home aide services that involve hands-on care to an individual;

21           (e) Infusion nursing services;

22           (f) Assistance with pulmonary care, pulmonary rehabilitation or ventilation;

23           (g) In-home companion, sitter, and respite care services provided to an individual;

24 or

25           (h) Homemaker services provided in combination with in-home companion, sitter,  
26 respite, or other home services;

27           (7) "Home health agency", a home care agency which is certified to receive  
28 Medicare and Medicaid reimbursement for providing nursing care, therapy, medical social  
29 services, and home health aide services on a part-time, intermittent basis.

          192.1012. 1. Every county and city not within a county shall provide part-time,  
2 intermittent home care nursing services, and at least one of the following home care  
3 services on a part-time, intermittent basis:

4           (1) Physical therapy;

5           (2) Occupational therapy;

6           (3) Speech therapy;

7           (4) Medical social work; or

8           (5) Home health aide services.

9           2. Services provided under subsection 1 of this section shall be provided by a home  
10 care agency licensed under section 192.1014. Any county or city not within a county may  
11 provide these services by contract with another home care agency in another county.

          192.1014. 1. No person or political subdivision shall operate a home care agency  
2 without a license obtained from the department. Nothing in sections 192.1010 to 192.1034  
3 shall be construed to extend or modify the licensing of an individual health professional by  
4 the licensing boards for his or her profession or to create any new professional license  
5 category.

6           2. An application for a license shall be made available by the department. When  
7 filling out the application, the applicant shall include all of his or her educational and  
8 employment history or the history of its employees, whether or not the applicant deems the  
9 history to be relevant, as well as a list of any filed misdemeanor or felony charges and the  
10 adjudication of such charges of each employee. Any false statement provided on the  
11 licensure application shall result in a licensure denial. A license shall be granted to the

applicant upon a determination by the department that the applicant has complied with the provisions of sections 192.1010 to 192.1034 and the rules promulgated by the department under this section. Any person or political subdivision that receives a license issued under this section shall have a duty to disclose to any client or potential client the criminal history of its employees as listed on the license application and shall supply a report to the department, by the fifth of every month, a list of every person that is employed by the licensee on the first of the reporting month.

3. Any agency licensed under this section shall pay to the department a non-refundable annual license fee in an amount equal to or greater than five hundred dollars as determined by the department. In addition, the department shall formulate and adopt rules governing the renewal of licenses granted under this section.

4. Each license issued under this section shall be issued only for the premises and persons named in the license application and shall not be transferable or assignable except with the written approval of the department. The license shall be posted in a visible place on the licensed premises.

5. Any rule promulgated under this section shall not extend, modify, or limit the licensing of an individual health professional by his or her respective licensing board nor shall these rules in any way be construed to extend the appropriate scope of practice of any individual health care provider. Rules authorized under this section include rules:

(1) That recognize the different types of home care services and shall adopt specific requirements for the provision of each type of home care service;

(2) To establish staff qualifications, including professional requirements for home care agency staff. The rules may require that one or more staff of an agency be either licensed or certified. The rules may establish minimum training and education qualifications for staff and may include the recognition of professional certification boards for those professions not licensed or certified under any other provision of law provided that the professional board evaluates the applicants on a basis that protects the public health, safety, or welfare;

(3) For the purposes of ensuring effective supervision of in-home aide staff and timely provision of services. The department shall adopt rules defining geographic service areas for in-home aide services and staffing qualifications for licensed home care agencies;

(4) Prohibiting licensed home care agencies from hiring individuals listed on the family care safety registry under section 210.903;

(5) Requiring applicants for home care licensure to receive training in the requirements for licensure, the licensure process, and the rules pertaining to the operation of a home care agency; or

48           **(6) Defining the scope of permissible advertising and promotional practice by home**  
49 **care agencies.**

50           **6. Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
51 **created under the authority delegated in this chapter shall become effective only if it**  
52 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
53 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**  
54 **vested with the general assembly under chapter 536 to review, to delay the effective date,**  
55 **or to disapprove and annul a rule are subsequently held unconstitutional, then the grant**  
56 **of rulemaking authority and any rule proposed or adopted after August 28, 2014, shall be**  
57 **invalid and void.**

**192.1016. The department shall charge residential care facilities licensed under**  
2 **chapter 198 that have nursing home beds or adult care home beds licensed by the**  
3 **department a non-refundable annual license fee in the amount of four hundred fifty dollars**  
4 **and a non-refundable annual per-bed fee in the amount of twelve dollars and fifty cents.**

**192.1018. 1. The department may suspend, revoke, annul, withdraw, recall, cancel,**  
2 **or amend a license when there has been a substantial failure to comply with the provisions**  
3 **of sections 192.1010 to 192.1034 or any rule promulgated under sections 192.1010 to**  
4 **192.1034.**

5           **2. The provisions of chapter 621 shall govern all administrative action and judicial**  
6 **review in cases where the department has taken action under this section.**

**192.1020. 1. The department shall conduct an inspection of each agency licensed**  
2 **under this section every three years and in accordance with rules adopted under section**  
3 **192.1014.**

4           **2. Notwithstanding any provision of law to the contrary, the department may**  
5 **review any writing or other record in any recording which pertains to the admission,**  
6 **discharge, medication, treatment, medical condition, or history of persons who are or have**  
7 **been clients of the agency being inspected unless the client objects in writing to review of**  
8 **that client's records. Physicians, psychiatrists, nurses, and anyone else involved in giving**  
9 **treatment at or through an agency who may be interviewed by the department may**  
10 **disclose information related to any inquiry.**

11           **3. The agency, its employees, and any person interviewed during these inspections**  
12 **shall be immune from liability for damages resulting from the disclosure of any**  
13 **information to the department. Any confidential or privileged information received from**  
14 **review of records or interviews shall be kept confidential by the department and not**  
15 **disclosed without written authorization of the client or legal representative, or unless**  
16 **disclosure is ordered by a court of competent jurisdiction.**

17           **4. The department shall institute appropriate policies and procedures to ensure that**  
18 **this information shall not be disclosed without authorization or court order. The**  
19 **department shall not disclose the name of anyone who has furnished information**  
20 **concerning an agency without the consent of that person. Neither the names of persons**  
21 **furnishing information nor any confidential or privileged information obtained from**  
22 **records or interviews shall be considered “public records” as that term is used in chapter**  
23 **610. Prior to releasing any information or allowing any inspections referred to in this**  
24 **section, the client must be advised in writing by the licensed agency that the client has the**  
25 **right to object in writing to release of information or review of the client’s records and that**  
26 **by an objection in writing the client may prohibit the inspection or release of the records.**

**192.1022. Any person who knowingly and willfully establishes, conducts, manages,**  
2 **or operates any home care agency without a license is guilty of a class B misdemeanor for**  
3 **each violation.**

**192.1024. If the department finds that a person or political subdivision has**  
2 **established, conducted, managed, or operated a home care agency without a license, the**  
3 **department may request, and it shall be the duty of the county prosecuting attorney or the**  
4 **attorney general, to bring an action in the circuit court to enjoin the acts or practices in**  
5 **violation of sections 192.1010 to 192.1034. In any such action, the court may grant the**  
6 **department such prohibitory or mandatory injunctive relief as the facts may warrant.**

**192.1026. 1. A home care agency shall prohibit its employees from smoking while**  
2 **providing services to an individual’s home and shall inform its clients of such prohibition.**

3           **2. The department may impose an administrative penalty not to exceed two**  
4 **hundred dollars for each violation on any person or political subdivision that owns,**  
5 **manages, operates, or otherwise controls the home care agency and fails to comply with**  
6 **this section.**

7           **3. For the purposes of this section, the following terms shall mean:**

8           **(1) “Employee”, an individual under contract with the home care agency to provide**  
9 **home care services;**

10          **(2) “Smoking”, the use or possession of any lighted cigar, cigarette, pipe, or other**  
11 **lighted smoking product.**

**192.1028. Each client of a home care agency shall have the following rights:**

2           **(1) To be informed and participate in his or her plan of care;**

3           **(2) To be treated with respect, consideration, dignity, and full recognition of**  
4 **individuality and right to privacy;**

5           **(3) To receive care and services that are adequate, appropriate, and in compliance**  
6 **with relevant federal and state laws, rules, and regulations;**

7 (4) To voice grievances about care and not be subjected to discrimination or reprisal  
8 for doing so;

9 (5) To have his or her personal and medical records kept confidential and not be  
10 disclosed except as permitted or required by applicable state or federal law;

11 (6) To be free of mental and physical abuse, neglect, and exploitation;

12 (7) To receive a written statement of services provided by the agency and the  
13 charges the client is liable for paying;

14 (8) To be informed of the process for acceptance and continuance of service and  
15 eligibility determination;

16 (9) To accept or refuse services;

17 (10) To be informed of the agency's on-call service;

18 (11) To be informed of supervisory accessibility and availability;

19 (12) To be advised of the agency's procedures for discharge;

20 (13) To receive a reasonable response to his or her requests of the agency;

21 (14) To be notified within ten days when the agency's license has been revoked,  
22 suspended, canceled, annulled, withdrawn, recalled, or amended; and

23 (15) To be advised of the agency's policies regarding patient responsibilities.

192.1030. During the agency's initial evaluation visit or before furnishing services,  
2 a home care agency shall provide each client with the following:

3 (1) A copy of the declaration of home care clients' rights;

4 (2) A copy of the agency's policies regarding client responsibilities as it relates to  
5 safety and care plan compliance;

6 (3) The address and telephone number for information, questions, or complaints  
7 about services provided by the agency; and

8 (4) The address and telephone number of the department division responsible for  
9 the enforcement of the provisions of sections 192.1010 to 192.1034.

192.1032. 1. The department shall be responsible for enforcing the provisions of  
2 sections 192.1010 to 192.1034. The department shall investigate complaints made to it and  
3 reply within a reasonable period of time, not to exceed sixty days.

4 2. Once the department has received a complaint alleging a violation of the  
5 provisions of sections 192.1010 to 192.1034 pertaining to client care or client safety, the  
6 department shall initiate an investigation as follows:

7 (1) Immediately upon receipt of the complaint if the complaint alleges a life-  
8 threatening situation;

9 (2) Within twenty-four hours if the complaint alleges abuse of a client;

10 (3) Within forty-eight hours if the complaint alleges neglect of a client; or

11           **(4) Within two weeks in all other situations.**

12

13   **The investigation shall be completed within thirty days of its initiation. The requirements**  
14   **of this section are in addition to and not in lieu of any investigatory and reporting**  
15   **requirements for health care personnel.**

16           **3. A home care agency shall investigate, within seventy-two hours, complaints made**  
17   **to the agency by a home care client or the client's family and must document both the**  
18   **existence of the complaint and the resolution of the complaint.**

**192.1034. The department may inspect home care clients' medical records**  
2   **maintained at the agency when necessary to investigate any alleged violation of sections**  
3   **192.1010 to 192.1034 and shall maintain the confidentiality of all persons who register**  
4   **complaints with the department and of all medical records inspected by the department.**  
5   **A person who has filed a complaint shall have access to information about a complaint**  
6   **investigation involving a specific home care client if written authorization is obtained from**  
7   **the client or legal representative.**

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